

## **REMARKS**

### ***Amendments to the Specification***

The specification has been amended on page 5, lines 16-17 to correct informalities pointed out by the Examiner in the definition of the term “comprising”. This term has been defined as “including” which is the broadest alternative recited in the paragraph, i.e., the listed steps, options, or alternatives need not be exhaustive, a definition now consistent with the normal interpretation of this term.

### ***Amendments to the Claims***

Claim 1 has been amended without prejudice to recite preferred embodiments of applicants invention that are more clearly differentiated from the prior art. Specifically, three limitations have been introduced on the needle element of the microactivation device. These limitations are: length (about 50 micrometers to about 250 micrometers – page 8, lines 21-22); diameter of the needle at its base (about 10 micrometers to about 200 micrometers – page 8, lines 23-24); and that the one or more needles end in a sharp point or tip (page 8, line 9)

Claim 7 has been canceled without prejudice.

***Claim rejection – 35 USC §112***

Claims 1 and 3-18 were rejected under 35 USC §112, second paragraph, as being indefinite. Applicants' assume that the amended specification removing informalities in the definition of comprising (open ended) overcomes this rejection.

***Claim rejection – 35 USC §102***

Claims 1, 8-10 and 13-15 were rejected under 35 USC §102(b) as being anticipated by Coss (3,756,242). Applicants traverse this rejection.

Coss discloses a mechanical scarifier for the controlled abrading of the skin of a patient in allergy testing, for example (abstract). The device is thus designed to make scratches on the skin which for example, when activated by an allergen, become visible. The scarifier disclosed includes a rotary blade **30** which terminates in an edge **32** (See **Fig 3** and description on lines 23-50 of column 2). Although Coss is silent about the dimensions of the blade and edge, the figures strongly suggest that they are not microscopic.

Coss is also silent about a microactivation system that utilizes one or more needles in any form.

In contrast to Coss, applicants' invention is directed to a microactivation system and method designed to provide cosmetic benefits to the skin and requires at least one microscopic needle which has a length of from about 50 micrometers to about 250

micrometers, a diameter at its base (i.e., distal end) of about 10 micrometers to about 200 micrometers and terminates in a sharp point or tip. None of these elements are disclosed by Coss. Absent disclosure of microscopic needles of the recited dimensions terminating in a sharp point or tip, Coss could not anticipate applicants' claims.

Neither does the reference render the claims obvious. Coss is directed to a mechanical scarifier that employs a macroscopic rotating blade for abrading skin. This arrangement is quite distinct from a device that employs pointed needles to punch microscopic holes on the order of 200 micrometers or less in diameter so as to effect limited penetration of the epidermis. This limited penetration activates for example basal cells thereby delivering cosmetic benefits to the skin. Absent a disclosure of an apparatus employing microscopic needles of the recited dimensions terminating in a sharp point or tip and its method of use, the reference does not present a *prima facie* case of obviousness.

In light of the above amendments and remarks, applicants respectfully request that the 102(b) rejection of claims 1, 8-10 and 13-15 over Coss (3,756,242) be reconsidered and withdrawn.

Claims 1, and 3-18 were rejected under 35 USC §102(e) as being anticipated by Carson et al (7,087,063). Applicants traverse this rejection.

Carson et al is directed to a device and technique for abrading a small sample of epidermis for bioanalytical processing (abstract). The device removes a small sample (e.g., 300 micrograms) of epidermal tissue (abstract) by rotating an abrasive probe **14** on the skin by means of handle **28** (column 5, lines 3-33). The probe of the abrader **14** terminates in an abrasive surface **38**. With reference to **Fig 3**, Carson et al discloses

that the abrasive surface includes a series of peaks **58** and troughs **60** which do not terminate in sharp points or tips but rather in flat surface (landings) meeting the walls so as to form a sharp edge as described at lines 9-39 of column 4.

Carson et al is silent about the use of needles in any form.

In contrast to Carson et al, applicants' invention is directed to a microactivation system designed to provide cosmetic benefits to the skin and requires at least one microscopic needle which has a length of from about 50 micrometers to about 250 micrometers, a diameter at its base (i.e., distal end) of about 10 micrometers to about 200 micrometers and terminates in a sharp point or tip. Needles having these dimensions and properties are not disclosed by Carson et al. Absent disclosure of microscopic needle(s) of the recited dimensions terminating in a sharp point or tip, Carson et al could not anticipate applicants' claims.

Claim 8 is even more removed from Carson et al. Carson et al is directed to a method for collecting a small sample of epidermis by abrasion. The method employs a device wherein a macroscopic rotating abrasive surface drills a hole in the epidermis on the order of 1.5 mm in diameter, i.e. the diameter of the abrasive surface (column 4, lines 19-21).

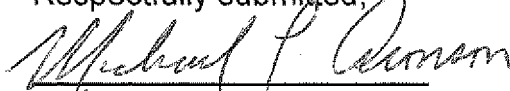
In contrast, applicants' method recites the use of a device that employs one or more microscopic sharp tipped needles to punch holes in the epidermis that are on the order of 200 micrometers (or less) so as to microactivate basal cells to deliver a cosmetic benefit. Absent disclosure of microscopic needle(s) of the recited dimensions terminating in a sharp point or tip, and the implied dimensions of the holes produced in the epidermis by these needles, Carson et al could not anticipate applicants' claims.

Neither does the reference render the claims obvious. Carson et al is directed to an abrasion device that employs a macroscopic rotating abrasive surface which drills a hole in the epidermis on the order of 1.5 mm, i.e. the diameter of the abrasive surface (column 4, lines 19-21). This arrangement is quite distinct from applicants' device that employs pointed needles to punch holes in the epidermis of 200 micrometers (or less) in diameter so as to microactivate basal cells to deliver cosmetic benefits. Absent a disclosure of microscopic needles of the recited dimensions terminating in a sharp point or tip, and the implied dimensions of the holes produced in the epidermis, the reference does not present a *prima facie* case of obviousness.

In light of the above amendments and remarks, applicants respectfully request that the 102(e) rejection of claims 1 and 3-18 over Carson et al (7,087,063) be reconsidered and withdrawn and that the application be allowed to issue as a patent.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael P. Aronson", is written over a horizontal line.

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